

**EXHIBIT 4**  
**9/28/12 ZAVIN DECLARATION**  
**CASE NO. 12-4175-WHP**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SPANSKI ENTERPRISES, INC.	)	
and EUROVU, S.A.,	)	
Plaintiffs,	)	Case No.
vs.	)	12 CV 4175 (WHP)
INTERCOM VENTURES, LLC,	)	ECF CASE
INTERCOM POLAND, LLC, TONY	)	
HOTI AND DYLAN BATES,	)	
Defendants.	)	

Deposition of DYLAN PAUL BATES,

Chicago, Illinois

September 5, 2012

12:23 P.M.

Reported By:

Elia E. Carrion

Ref: 8148

September 5, 2012

12:23 P.M.

The deposition of DYLAN PAUL BATES,  
called as a witness herein for examination, taken  
pursuant to the Federal Rules of Civil Procedure of  
the United States District Courts pertaining to the  
taking of depositions, taken before ELIA E. CARRIÓN,  
CSR No. 084.004641, a Certified Shorthand Reporter  
of said state, taken at Suite 2300, 321 North Clark  
Street, Chicago, Illinois, on the 5th day of  
September, 2012, at 12:23 P.M.

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9 By: MR. JONATHAN ZAVIN, ESQ.

10 appeared on behalf of the Plaintiffs;

11  
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18 By: MR. RICHARD E. STECK, ESQ.

19 appeared on behalf of Defendants

20 Intercom Ventures, LLC;

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10 By: MR. KEVIN C. PARKS, ESQ.

11 appeared on behalf of Defendant

12 Dylan Bates.

1       you've been deposed.

2           A.       Primarily medical. I'm in the physical  
3       therapy, outpatient physical therapy business; so  
4       workers' comp litigation, primarily.

5           Q.       This is litigation involving your  
6       company?

7           A.       Correct, yes. Or clients. You know,  
8       they would -- work comp settlement type of situation  
9       and/or one personal injury within one of our  
10      facilities.

11          Q.       Okay. Have you ever been involved in  
12      personal litigation where you've been a plaintiff or  
13      defendant and been deposed?

14          A.       No.

15          Q.       What is the company that you work for?

16          A.       ATI Physical Therapy.

17          Q.       And what's your position at that company?

18          A.       COO, chief operating officer.

19          Q.       How long have you been there?

20          A.       Thirteen years.

21          Q.       And just starting, just to get a little  
22      background, could you tell me where you went to  
23      college and when you graduated.

24          A.       I went to college at the University of

1 Wisconsin-La Crosse for physical therapy school and  
2 graduated in 1999.

3 Q. And what did you do following graduation?

4 A. I joined with ATI.

5 Q. Okay. Did you have any other educational  
6 credentials or experience after you graduated from  
7 the University of Wisconsin?

8 A. No.

9 Q. Have you been involved in any businesses  
10 other than ATI?

11 A. Yes.

12 Q. What businesses are those?

13 A. Real estate, a number of different  
14 entities and properties that we own on the  
15 commercial side.

16 Q. Well, let me pause you for a moment.  
17 When you say "we own," who is the "we" that you're  
18 talking about?

19 A. Just a syndicate of other investors.

20 Q. Okay. And when did you get involved in  
21 that, in the real estate business?

22 A. It's been over the last, 10 to 12 years.

23 Q. And what kind of properties are those?  
24 Commercial? Residential?

1 A. Commercial.

2 Q. Where are they located?

3 A. Throughout the western suburbs of  
4 Chicago.

5 Q. Are they all in the state of Illinois?

6 A. They are.

7 Q. Okay. Any other businesses you have been  
8 involved in?

9 A. Yes. I'm involved in the archery  
10 business. I own a compound boat company, as well as  
11 a couple of accessory companies to the archery  
12 industry.

13 Q. Again --

14 MR. STECK: I'm sorry. What industry?

15 THE WITNESS: Archery.

16 BY MR. ZAVIN:

17 Q. You used the term "we." Who is the "we"  
18 in the archery business?

19 A. A handful of other investors.

20 Q. Are any of these other investors family  
21 members?

22 A. No.

23 Q. The same question for real estate: Are  
24 any of the other --



1 A. No.

2 Q. -- investors family? Okay.

3 What other businesses have you been  
4 involved in?

5 A. I was involved in another venture with  
6 the Intercom Ventures gentleman.

7 Q. What venture was that?

8 A. That was a closed-circuit television  
9 commercial programming for Ultimate Fighting, the  
10 UFC.

11 Q. What was the name of that business?

12 A. It was called Catalyst Ventures.

13 Q. Okay. When did you become involved in  
14 Catalyst Ventures?

15 A. Approximately 2008, 2009. 2008, '9. In  
16 that time frame.

17 Q. Okay. I'd like to go through a little  
18 more detail about Catalyst Ventures. How did you  
19 get involved in Catalyst Ventures?

20 A. I was introduced to Tony and Drilon via a  
21 common acquaintance. And I had some contacts with  
22 the UFC, and we worked out a deal to provide in bars  
23 and restaurants the pay-per-view content for the  
24 UFC.

1 Q. So is it fair to say you lost the entire  
2 [REDACTED]?

3 A. Correct.

4 Q. Other than that initial investment, did  
5 you have any further investment in Catalyst above  
6 that [REDACTED]?

7 A. I don't understand that.

8 Q. Well, my understanding -- and perhaps I'm  
9 phrasing this badly. My understanding was that  
10 through this investment vehicle, you and your two  
11 partners put in a [REDACTED], of which  
12 approximately a [REDACTED] was yours; is that  
13 correct?

14 A. Correct.

15 Q. Other than that initial [REDACTED],  
16 were there any further funds put in Catalyst by you?

17 A. I don't recall. I don't think so.

18 Q. Okay. Why didn't Catalyst work, from a  
19 financial point of view?

20 A. A number of reasons.

21 Q. Okay. Briefly, you can tell me them.

22 A. We had another partner that held the  
23 commercial distribution rights for UFC that was  
24 difficult to work with.

1 Q. Does that mean you didn't obtain the  
2 rights?

3 A. No. We had -- we had an agreement with a  
4 company called "Joe Hand Promotions," which owns the  
5 exclusive rights in North America and a couple of  
6 other territories to deliver closed-circuit in  
7 commercial establishments for their pay-per-views.  
8 So they resale to other distributors such as DirecTV  
9 and Comcast and so forth. And we were another  
10 option to go in and provide the technology to -- to  
11 deliver the signal.

12 Q. And why didn't that business model work?

13 A. Just there was lack of cooperation from  
14 Joe Hand Promotions from an installation  
15 perspective. That's the crux of it.

16 Q. Okay. Am I correct that your involvement  
17 with Mr. Hoti in Catalyst was prior to your  
18 involvement with him in connection with Intercom  
19 Poland?

20 A. Correct.

21 Q. Okay. When did you first become involved  
22 in Intercom Poland?

23 A. I believe it was in 2010.

24 Q. Well, why did you become involved in

1 Intercom Poland?

2 A. It's -- you know, I look at various  
3 investment opportunities, and I was presented with  
4 an opportunity.

5 Q. And who presented you with the  
6 opportunity -- Mr. Hoti?

7 A. Correct.

8 Q. Okay. And what did he tell you about the  
9 opportunity at that time?

10 A. He told me that they were going -- they  
11 had a number of other platforms, and they were going  
12 to launch a Polish platform, and there was an  
13 investment opportunity.

14 Q. And did you make it -- in fact, make a  
15 deal with Mr. Hoti to invest in this opportunity?

16 A. Conceptually. And ultimately, it came to  
17 fruition.

18 Q. Did you invest in this venture  
19 personally?

20 A. There was an entity, DBPol, that invested  
21 in Intercom Poland.

22 MR. ZAVIN: Okay. Let's mark this -- off the  
23 record.

24 (WHEREUPON, discussion was had off

1 the record.)

2 MR. ZAVIN: Back on the record.

3 In an off-the-record discussion, we have  
4 discussed the fact that there's as yet no  
5 confidentiality agreement in place. And per my  
6 agreement with defendants' counsel, specifically  
7 with Mr. Parks who is producing documents pursuant  
8 to a document request, I agree that until we reach  
9 either a confidentiality agreement or an impasse on  
10 a confidentiality agreement, we will treat all of  
11 the documents he's marked as "attorneys' eyes only"  
12 as attorneys' eyes only.

13 Further, what I've agreed to for the purposes  
14 of today's deposition is to the extent there is  
15 specifically a question about a document that's been  
16 marked attorneys' eyes only, any response -- that  
17 question response, specifically about the document,  
18 I will treat as attorneys' eyes only until such time  
19 as we've -- the document has been redesignated or  
20 there is an impasse on it and we have to go to the  
21 Court.

22 MR. STECK: Let me just add to that that I  
23 expect to be included in the agreement about these  
24 documents, many of which are those of my client,

1 Intercom Poland, or copies of documents of my  
2 client.

3 MR. ZAVIN: Well, technically, these were not  
4 documents produced by your client, and my agreement  
5 was with Mr. Parks. But I assume that Mr. Parks  
6 will protect your client's interest with respect to  
7 these documents.

8 (WHEREUPON, a certain document was  
9 marked Plaintiffs' Deposition  
10 Exhibit No. 1, for identification,  
11 as of September 5, 2012.)

12 (WHEREUPON, the document was  
13 tendered to the witness.)

14 BY MR. ZAVIN:

15 Q. Okay. Mr. Bates, I have placed in front  
16 of you a document that's been marked as Plaintiffs'  
17 Exhibit 1.

18 Do you recognize that document?

19 A. Vaguely.

20 Q. Do you know what it is?

21 A. After looking at it, I know what it is.

22 Q. Well, that's what I'm asking. That's why  
23 I put it in front of you.

24 A. Yes. Yes.

1 Q. What is it?

2 A. It's the operating agreement for  
3 DBPol, LLC.

4 Q. Okay. And looking at what has been  
5 marked as Bates Number DB2335, which is the  
6 second-to-last page, is that in fact your signature?

7 A. Yes.

8 Q. Okay. Without looking at the document  
9 for the moment, do you remember the basis on which  
10 DBPol was formed?

11 A. I don't understand your question.

12 Q. Well, is -- was this set up as a vehicle  
13 whose sole purpose was to invest in Intercom Poland?

14 A. It's -- it's an Illinois LLC -- or it's  
15 an LLC; I don't know which state it was formed in --  
16 that could have been used for anything.

17 Q. Okay. What does "DB" stand for in DBPol?

18 A. You tell me.

19 Q. Well, do you really not know?

20 A. It most likely stands for my name.

21 Q. Okay. And what is --

22 A. Which is Dylan Bates.

23 Q. Right. And what does "Pol" stand for?

24 A. Most likely Poland.

1 Q. Okay. Is this a single-member entity?

2 A. From what I understand.

3 Q. Well, do you have a recollection whether  
4 it is?

5 A. I -- I do not.

6 Q. Okay. Well, let's look at Bates stamp --  
7 the first page of the document after the index is  
8 Bates-stamped 2328. Does it say in the second  
9 whereas: "The member desires to establish a  
10 single-member limited liability company"?

11 A. Okay. Then it is a single-member LLC.

12 Q. As a matter of fact, Mr. Bates, you were  
13 the sole member of this company; correct?

14 A. Yes.

15 Q. And you owned a hundred percent of it;  
16 correct?

17 A. Correct.

18 Q. And you had complete and utter control  
19 over this company, didn't you?

20 A. As a single member, I would imagine  
21 that's the definition.

22 Q. So there's no other human being in the  
23 world who had any input whatsoever into what this  
24 company did.



1 A. I guess not.

2 Q. Okay. After you set up this company  
3 and -- let's see. The agreement says -- it's dated  
4 September, blank, 2010. Do you know whether the  
5 company was set up in or about September 2010?

6 A. I imagine, if that's the date on it. I  
7 don't recall specifically.

8 MR. PARKS: Well, Mr. Bates, I just want to  
9 remind you I don't want you to guess. If you know,  
10 if you recall, you can say so. But don't guess.

11 BY THE WITNESS:

12 A. I don't recall.

13 MR. ZAVIN: Okay. Let's mark this as  
14 exhibit -- Plaintiffs' Exhibit 2.

15 (WHEREUPON, a certain document was  
16 marked Plaintiffs' Deposition  
17 Exhibit No. 2, for identification,  
18 as of September 5, 2012.)

19 (WHEREUPON, the document was  
20 tendered to the witness.)

21 BY MR. ZAVIN:

22 Q. Mr. Bates, I'm showing you a two-page  
23 document that's marked as Plaintiffs' Exhibit 2.

24 Do you recognize that document?

1 collaborative discussion and there was an agreement.

2 Q. Mr. Bates -- did he disagree with the  
3 recommendation?

4 A. I don't recall that.

5 Q. Okay. Let's take a look at this  
6 document, which we'll mark as Plaintiffs' Exhibit 5.

7 (WHEREUPON, a certain document was  
8 marked Plaintiffs' Deposition  
9 Exhibit No. 5, for identification,  
10 as of September 5, 2012.)

11 (WHEREUPON, the document was  
12 tendered to the witness.)

13 BY MR. ZAVIN:

14 Q. Mr. Bates, do you recognize this  
15 document?

16 A. I don't recognize this particular  
17 document. If I read through it, I can maybe comment  
18 on the content.

19 Q. Well, would you read it. It appears to  
20 be an e-mail dated October 8, from you to Mr. Hoti.

21 A. Okay.

22 Q. Okay. Now, please feel free to take your  
23 time and read through it and see whether that  
24 refreshes your recollection as to the document.

1           A.     Yeah, I think it's reflective of what I  
2     have already said -- that it was collaborative in  
3     nature.

4           Q.     But isn't it fair to say that Mr. Hoti's  
5     at least initial reaction was he was not in favor of  
6     Mr. Castellano as the operating officer?

7           A.     I actually see the word "surprised."

8           Q.     Okay. And what did he say after he was  
9     surprised? After, in this or some subsequent  
10    conversation or e-mail.

11          A.     That he needs a couple of days to think  
12    about it because he was surprised.

13          Q.     And you said that your comfort level is  
14    high with Nunzio; is that correct?

15          A.     If -- if I -- if it's in this e-mail,  
16    that's what I said.

17          Q.     Okay. And he did, in fact, become the  
18    operations manager of Intercom Poland; is that  
19    correct?

20          A.     Correct.

21          Q.     Were you involved in the hiring of other  
22    people for Intercom Poland?

23          A.     I attended two interviews.

24          Q.     With whom?

1           A.       Lukasz. What was his name? I don't know  
2       his last name. And the other professional is -- her  
3       name was Isabella, who I think was hired in a  
4       marketing role.

5           Q.       Why were you attending those interviews?

6           A.       Because I was going to invest [REDACTED]  
7       in the venture.

8           Q.       Is it fair to say you wanted some control  
9       over the venture?

10          MR. PARKS: Object to the form of the question.

11       BY MR. ZAVIN:

12          Q.       You can answer.

13          A.       I think anyone in their right mind that  
14       puts money into something would like to be a  
15       contributor, especially in the beginning stages, to  
16       set it up for potential success.

17          Q.       Well, actually, you insisted on being  
18       much more than a contributor, didn't you?

19          MR. PARKS: Object to the form of the question.  
20       It's argumentative.

21       You can answer.

22       BY MR. ZAVIN:

23          Q.       You didn't insist on having control?

24          A.       I did not insist on having control.

1 Q. Who was the manager of Intercom Poland?

2 MR. PARKS: Objection. Asked and answered.

3 You can answer.

4 MR. ZAVIN: By the way, that is incorrect. It  
5 has not been asked and answered.

6 BY THE WITNESS:

7 A. DBPol.

8 BY MR. ZAVIN:

9 Q. And DBPol was the manager; and it had  
10 control over Intercom Ventures, did it not?

11 A. At what point in time?

12 Q. Well, is there any point in time when it  
13 didn't have control over Intercom Ventures --  
14 Intercom Poland?

15 A. It was based on the stipulations of  
16 return on capital, which obviously, as you know, did  
17 not happen.

18 Q. Okay. So it's a simple question.

19 Is there any time from its formation to  
20 the present where DBPol has not had -- been the  
21 manager and had control over Intercom Poland?

22 MR. PARKS: Object to the form.

23 You can answer.

24

1 BY THE WITNESS:

2 A. I guess you could say legally on paper,  
3 in black and white, exercised, no.

4 BY MR. ZAVIN:

5 Q. Let's -- let's stick with legally. Is  
6 there any time since its formation to the current,  
7 present date that Intercom -- that DBPol has not  
8 been the manager of Intercom Poland?

9 A. No.

10 Q. There's been no time when it was not the  
11 manager?

12 A. Nope.

13 Q. So it is the manager, as we speak;  
14 correct?

15 A. From what I understand.

16 Q. And what are the powers of the manager of  
17 Intercom Poland?

18 A. I wouldn't be able to tell you that.

19 Q. Was there a limited liability company  
20 agreement with respect to Intercom Poland?

21 A. Yes.

22 Q. Was that a negotiated agreement?

23 A. Yes.

24 Q. Were you involved in the negotiation of

1 that agreement?

2 A. Yes.

3 Q. Did you have your own counsel with  
4 respect to the negotiation of that agreement?

5 A. Dan Cole acted on my behalf in that  
6 negotiation.

7 Q. So Mr. Cole was your counsel with respect  
8 to that negotiation; is that correct?

9 A. Correct.

10 Q. And who was representing Mr. Hoti?

11 A. I do believe it was Rick Steck.

12 Q. Who were the parties to that agreement,  
13 that -- when I say "that agreement," the limited  
14 liability company agreement?

15 A. DBPol, Intercom Ventures Poland, and  
16 Round Grove.

17 Q. Who is Round Grove?

18 A. I don't know.

19 Q. Do you associate a person with Round  
20 Grove?

21 A. I do believe it was a gentleman by the  
22 name of Jerry Weller, who I think I met in the  
23 office one time.

24 Q. Why was he a partner of Intercom Poland?

1 A. Yep.

2 Q. And am I correct that this Section 3.1  
3 sets forth the required capital contribution of the  
4 members?

5 A. Correct.

6 Q. What was the DBPol capital contribution  
7 requirement?

8 A. [REDACTED]

9 Q. Did you, in fact -- did DBPol, in fact,  
10 invest [REDACTED]?

11 A. Yes.

12 Q. Where did DBPol get that [REDACTED] from?

13 A. From its member.

14 Q. And that was you; is that correct?

15 A. Yes.

16 Q. And so that was your -- personally, that  
17 was your [REDACTED]; is that correct?

18 A. Well, it was DBPol's [REDACTED].

19 Q. Well, before you -- before it was  
20 received by DBPol, was it your personal fund?

21 A. Yeah, I guess so.

22 Q. Okay. Was anyone else required to make a  
23 capital contribution?

24 A. Not that I recall.



1 Q. And without going too much into details,  
2 let's see if you can remember this and we can agree  
3 on it.

4 Was there a provision for additional  
5 capital contribution by members?

6 A. I think there was a provision that  
7 members had the option, if it needed capital above  
8 the [REDACTED].

9 Q. Okay. Did you, in fact, make  
10 additional -- or did DBPol make additional capital  
11 contributions above the [REDACTED]?

12 A. Yes.

13 Q. How much additional capital contribution  
14 did it make?

15 A. Approximately [REDACTED].

16 Q. And that [REDACTED] was also your personal  
17 funds before it went to DBPol?

18 A. Yes.

19 Q. Okay.

20 (Court reporter clarification.)

21 MR. ZAVIN: Off the record.

22 (WHEREUPON, discussion was had off  
23 the record.)

24 BY MR. ZAVIN:

1 Q. What was the provision for return of  
2 capital to the members?

3 A. I think it was the capital would be  
4 repaid, plus a 50 percent risk premium.

5 Q. Okay. The risk premium that you  
6 discussed, that you just mentioned, that was  
7 provided for in Paragraph 3.1.4 on this same page?

8 A. Yes.

9 Q. How was capital to come out?

10 A. It changed a few times. I don't know the  
11 exact -- what we landed on.

12 Q. But is it fair to say that the actual  
13 capital contribution was to come out on a more  
14 favored basis?

15 A. Yes. It was a preferred -- I think what  
16 it was, it was going to be 75 percent; you know, if  
17 you distribute \$100, then 75 was supposed to come to  
18 me and 25 to the other members. And then after the  
19 capital and risk premium were repaid, that was going  
20 to flip pursuant to the membership interest in the  
21 entity. So I would have had 25 percent, which was  
22 per the operating agreement, post return of capital  
23 and risk premium.

24 Q. Okay. But prior to capital having come

1 out, you were to get money on a preferred basis,  
2 75 percent of distribution?

3 A. I think so.

4 Q. Did that percentage ever increase?

5 A. No. There was talk of it increasing. It  
6 never did.

7 Q. Again, I'm not trying to trick you, but  
8 is there any time it went to 90 percent?

9 A. It could have gone -- like I said, there  
10 was a couple of times when it -- I don't know  
11 exactly what was memorialized in here. Because we  
12 sat in Dan Cole's office, and it was either going to  
13 be 75/25 or 90/10. And it escapes me what we ended  
14 up signing up for. So we could probably find it in  
15 here but...

16 Q. Okay. Well, just to help the process  
17 along, can you turn to page 7 of the agreement?

18 A. Okay.

19 Q. Which is Bates-stamped DB0002355.

20 A. Yep.

21 Q. There's an Article IV, which is Profit,  
22 Loss, and Distributions; is that correct?

23 A. Yes.

24 Q. Okay. And 4.1.1(a), I think, reflects

1 what you just testified to -- that there's a  
2 75 percent to DBPol.

3 A. Yeah.

4 Q. Is that correct?

5 A. Yep.

6 Q. Now, following this, the signing of this  
7 agreement which did reflect the 75 percent, my  
8 question was: At any time later, was that  
9 arrangement changed?

10 A. I think there were discussions, but we  
11 never memorialized it with a changed operating  
12 agreement, from my recollection.

13 Q. Okay. Now, were there any control  
14 provisions connected with the repayment of capital  
15 contributions?

16 A. Yeah. I think it was going to revert to  
17 the membership interest upon repayment of capital.  
18 That's my recollection.

19 Q. Okay. Can I direct your attention on  
20 page 9 to Section 4.6. Why don't you take a moment  
21 and read that.

22 A. (Witness complies.)

23 Yeah. I don't understand it, legal  
24 speak.

1 Q. Well, looking at the second sentence, it  
2 says: "In the event, and for so long as, any unpaid  
3 capital contributions remain outstanding and the  
4 company is not expected to generate any additional  
5 distributable net cash or additional proceeds from  
6 the sale of STBs, then Intercom agrees that" -- and  
7 I'm going to skip over (x) and go to (y) --  
8 "notwithstanding anything contained herein to the  
9 contrary, DBPol will have the exclusive control and  
10 make all decisions regarding the company without any  
11 vote by Intercom during such period."

12 Do you see that?

13 A. Yeah. I think -- I think this is  
14 basically -- I thought that this was about -- I  
15 think this was a protection for like the downside  
16 scenario, if it ends up if things --

17 You know, the way I read it, and I think  
18 I recall, if they're sent out box inventory or  
19 there's assets and things go south, I think there  
20 was something about that that might tie to it. I  
21 don't -- I don't --

22 Q. Well --

23 A. This is a few years ago; so I don't know  
24 exactly.

1 Q. Has there been a downside scenario at  
2 Intercom Poland?

3 A. A little bit, yes.

4 Q. I think we'd all agree that --

5 A. Yes.

6 Q. Yes.

7 And under that scenario, DBPol has  
8 exclusive control and makes all the decisions  
9 regarding Intercom Poland; is that correct?

10 A. It --

11 MR. PARKS: Object to the form.

12 You can answer.

13 BY THE WITNESS:

14 A. In this document, as you can see that I  
15 cannot figure it out, even looking at this document,  
16 understand what that means from a control  
17 perspective; but as I said earlier, I have not  
18 imparted any control or direction over this entity  
19 or exercised rights that might be on this document.

20 BY MR. ZAVIN:

21 Q. Well, let's -- let's look at -- you know,  
22 I understand that's your position, Mr. Bates.

23 But let's look a little further at the  
24 document that goes to Article V, Management:

1 Rights, Powers, and Duties, on page 10. Do you  
2 recall this provision?

3 A. I do not.

4 Q. Okay. Why don't you take a moment and  
5 read through, at least through 5.1.3.

6 A. Okay.

7 Q. Just tell me when you're done.

8 A. Okay. I'm good.

9 Q. Okay.

10 A. So this says we have to agree on major  
11 decisions.

12 Q. Well, actually, Mr. Bates, that isn't  
13 what -- completely what it says, does it?

14 A. It says the manager, or the management  
15 committee, will provide written notice to the  
16 members of any major decisions, but it will require  
17 prior written approval of both Intercom and DBPol.

18 Q. Okay. Well, let's look first -- who is  
19 the manager of Intercom Poland?

20 A. DBPol.

21 Q. And what is the power of the manager?

22 A. I don't know. It says here, the major  
23 decision will require written approval of both  
24 Intercom and DBPol.

1 Q. Well, major decisions are specifically  
2 defined in this agreement, are they not?

3 A. Correct. It points to it.

4 Q. And that is on the exhibit to the  
5 agreement; correct?

6 A. Yep.

7 Q. All of the decisions are to be made by  
8 the manager; is that correct?

9 A. I -- define "all of the decisions."

10 Q. Well, doesn't 5.1.2 very specifically  
11 say: "The manager or the management committee will  
12 have the authority to make all expenditures that  
13 constitute approved expenses and engage in any acts  
14 and transactions on behalf of the company that are  
15 consistent with the purpose"?

16 A. This document here, if we want to read  
17 that, was never followed.

18 Q. Mr. Bates, I understand that you have a  
19 belief in what happened and you have your legal  
20 position. But at the moment I'd appreciate it if  
21 you'd just answer the questions.

22 This document, what we're talking about,  
23 is this document at the moment. Doesn't it provide  
24 that the manager should have -- has the authority to



1 engage in any acts and transactions on behalf of the  
2 company?

3 A. The document --

4 MR. PARKS: I object to the form of the  
5 question. And the document speaks for itself.

6 You can answer.

7 BY THE WITNESS:

8 A. Yeah, I think that it's in black and  
9 white. The document gives authority.

10 BY MR. ZAVIN:

11 Q. Okay. And the manager will remain the  
12 manager so long as the capital contribution hasn't  
13 been paid back; correct?

14 A. Yes.

15 Q. And I think we've already agreed that  
16 that your capital -- DBPol's capital contribution  
17 has never been paid back and DBPol was and is --  
18 remains the manager; is that correct?

19 A. Yes.

20 Q. And as a matter of fact, DBPol was the  
21 manager of Intercom Poland in May of 2012; correct?

22 MR. PARKS: Objection. Asked and answered more  
23 than once.

24 You can answer it again.

1 BY THE WITNESS:

2 A. Technically, yes.

3 BY MR. ZAVIN:

4 Q. And it was the manager in June of 2012;  
5 is that correct?

6 A. Yes.

7 MR. PARKS: Same objection.

8 BY MR. ZAVIN:

9 Q. You're designated the key person under  
10 this agreement, are you not?

11 A. Yeah.

12 Q. And did you -- were you ever in breach of  
13 this agreement? Or was DBPol -- you personally or  
14 DBPol ever in breach of this agreement?

15 MR. PARKS: Object to the form.

16 BY THE WITNESS:

17 A. I don't understand where you're going  
18 with that.

19 BY MR. ZAVIN:

20 Q. It's a simple question. Where I'm going  
21 is not relevant.

22 A. Define "breach."

23 Q. Did you follow all of the requirements of  
24 this agreement that the agreement imposed on you

1 personally or on DBPol?

2 A. I still think that I don't understand  
3 your question.

4 Q. Are you aware of any time that you did  
5 not do what was required of you under this  
6 agreement?

7 A. You asked in the context of a key person.

8 Q. I'm asking you in the context of this  
9 agreement. Are you aware of any time --

10 A. No.

11 Q. You are not aware of any such time?

12 A. I -- I need it more defined.

13 Q. Well, you understand that you had  
14 obligations under this agreement?

15 A. I do understand that.

16 Q. And what were those obligations? And  
17 when I say "you," I mean --

18 A. To devote appropriate amounts of time as  
19 necessary to accomplish the needs of the company.

20 Q. Did you do that?

21 A. In the initial stages, I gave some  
22 guidance in terms of my business acumen.

23 Q. Define "initial stages."

24 A. In the first few months, I was -- I was

1 involved from a strategic perspective and kept  
2 apprised, as any reasonable person would expect with  
3 this type of investment, of the happenings and  
4 results of the day-to-day operations of the  
5 organization.

6 Q. And were you kept apprised of the  
7 operations of this company right through June  
8 of 2012?

9 A. Not all the time.

10 Q. But generally, isn't it fair to say you  
11 were kept apprised at -- of the --

12 A. Intermittently, as evidenced by the  
13 discovery.

14 Q. Well, there will probably be further  
15 discovery on that from other people's e-mails and  
16 testimony. But what do you think your involvement  
17 was through June of 2012?

18 A. How broad do you want to go? I don't  
19 understand.

20 Q. Well, how often did you have  
21 conversations with anyone involved with Intercom  
22 Poland, either by telephone, in person, or via  
23 e-mail?

24 A. Very infrequently. You know, I actually

1 through 3685. And it appears to be an e-mail from  
2 you -- I'm sorry -- withdrawn -- from Mr. Hoti to  
3 you, also dated May 23, 2012, in which he forwards  
4 an e-mail from someone at TVN.

5 Do you recall receiving this e-mail?

6 A. I don't.

7 Q. Do you have any reason to think you  
8 didn't receive it?

9 A. Like I said, I get a lot of e-mails. So  
10 it looks like it was received, as my assistant  
11 printed it off.

12 MR. ZAVIN: Let's mark this as Exhibit 37.

13 (WHEREUPON, a certain document was  
14 marked Plaintiffs' Deposition  
15 Exhibit No. 37, for identification,  
16 as of September 5, 2012.)

17 (WHEREUPON, the document was  
18 tendered to the witness.)

19 BY MR. ZAVIN:

20 Q. I'm showing you a document that is the  
21 original Summons and Complaint in this lawsuit.  
22 When did you first see this?

23 MR. PARKS: Object to the form of the question.  
24

1 BY THE WITNESS:

2 A. I -- I don't recall. I don't know if  
3 I've ever seen this. This was never served to me.

4 BY MR. ZAVIN:

5 Q. You're named as a defendant in this  
6 lawsuit; correct? Personally.

7 A. Uh-huh.

8 Q. How many other times have you been named  
9 as a defendant -- how many lawsuits have you  
10 personally been named as a defendant?

11 A. Very -- I -- I don't recall.

12 Q. Does that mean you don't recall any  
13 others where you were personally named as a  
14 defendant?

15 A. Personally, yeah, I don't think I ever  
16 have been.

17 Q. And you don't recall when you -- the  
18 circumstances under which you first saw this?

19 A. Correct. I was told at a certain  
20 point --

21 THE WITNESS: And I think, Rick, we had a brief  
22 call.

23 I don't remember the date of that, just to go  
24 over the basics of it. I don't recall that.

1 MR. ZAVIN: Maybe this will refresh your  
2 recollection. Let's mark this as Exhibit 38.

3 (WHEREUPON, a certain document was  
4 marked Plaintiffs' Deposition  
5 Exhibit No. 38, for identification,  
6 as of September 5, 2012.)

7 (WHEREUPON, the document was  
8 tendered to the witness.)

9 BY MR. ZAVIN:

10 Q. Exhibit 38 is a one-page e-mail from  
11 Mr. Castellano to Mr. Hoti, Mr. Qehaja, and you.

12 A. Uh-huh.

13 Q. It's dated May 25, 2012, which is the  
14 same date that the Summons is dated on the prior  
15 exhibit; is that correct?

16 A. It appears so.

17 Q. And in this e-mail, Mr. Castellano  
18 purports to be sending the three of you copies of  
19 the lawsuit. And there's an attachment indicated.

20 Do you see that?

21 A. I do.

22 Q. Do you recall getting this e-mail?

23 A. Vaguely, but I don't know when it -- when  
24 I received it.

1 Q. Well, do you have any reason to think you  
2 didn't receive it on May 25th?

3 A. Like I said, I -- it could have been the  
4 next week sometime and I -- I can't nail down the  
5 date. I sometimes don't check e-mail over the  
6 weekends, and I often take Friday afternoon off. So  
7 I don't know when I -- so I don't know.

8 Q. So your testimony is, even though you've  
9 never been sued personally before, you have no  
10 recollection of when you received a copy of a  
11 lawsuit in which you were personally sued?

12 A. Calendar date? No, I don't. I don't  
13 have recollection of that.

14 Q. Okay. And once you became aware of that  
15 lawsuit, what action did you take?

16 A. From my recollection, I got -- I got drug  
17 back into it and was asked to call Bob to try to  
18 come to terms.

19 Q. When you became aware of the lawsuit, did  
20 you read a copy of the Complaint?

21 A. I -- I think I might have skimmed it at  
22 some point.

23 Q. Did you know what you were being sued  
24 for?



1           A.     I didn't fully understand what the issue  
2     was.

3           Q.     When you found out you were being  
4     personally sued, did you call counsel?

5           THE WITNESS:   And, Rick, I can't recall when  
6     you got involved.   It might have been for the  
7     preliminary injunction at that time.   I think you  
8     were going to represent Intercom Poland at that  
9     point.

10          And so that was the extent of our dialogue  
11     with -- with counsel, per se.

12     BY MR. ZAVIN:

13          Q.     Okay.   Now, I'm asking you a slightly  
14     different question.   Maybe your answer is the same,  
15     but the question is slightly different.

16                 You were personally sued in this lawsuit.  
17     Did you contact counsel with respect to the fact  
18     that you were personally sued?

19          A.     We had one conference call, just to -- to  
20     kind of frame up -- frame up the issue.   And then  
21     the next notice after I had talked to Bob was an  
22     e-mail that said, Hey, we're going to let these  
23     parties try to work out a deal.   And so I can't nail  
24     the exact time frame.

1 Q. Were you --

2 A. That's what I recall.

3 Q. Were you aware that this lawsuit was  
4 suing you for copyright infringement for the  
5 continued broadcast of programming on Intercom  
6 Poland?

7 MR. PARKS: Object to the question, in that  
8 it -- there's no time reference.

9 BY MR. ZAVIN:

10 Q. Were you --

11 A. I guess I -- yeah, no time reference.  
12 But also, as I've said a few times, there were  
13 numerous, you know, letters that you've brought out  
14 here and numerous e-mails from other vendors saying,  
15 Hey, there's issues going on here. I probably  
16 didn't park on the fact and say, Hey, listen, sit  
17 down and really pay attention to this.

18 I didn't figure we'd be sitting here,  
19 being tens of thousands of dollars later, in the  
20 muck of this thing. So I did not probably give it  
21 its due from a standpoint of saying, Hey, you know,  
22 this is about me personally. As I never saw the  
23 May 16 letter, I never said push play and continue  
24 to broadcast this stuff. And so after I talked to

1 Bob, I was like, Hey, maybe we can work out a deal  
2 here.

3 Q. Mr. Bates, how soon after May 25 did you  
4 have an understanding that you and Intercom Poland  
5 were being sued for copyright infringement for the  
6 continued broadcast of EuroVu programs?

7 A. I've always -- I always have said that  
8 this was -- that this has been a contract issue  
9 going back and forth about dollars owed and so  
10 forth. This is well after the fact. Probably when  
11 I -- when I met with my counsel sitting here today,  
12 Kevin Parks, that I fully understand that I  
13 personally was having a finger pointed at me saying,  
14 Hey, Dylan Bates, you contributed to this and you  
15 continued to push play and instructed people in your  
16 manager's chair to continue to do that. That,  
17 frankly, just flat-out did not happen.

18 Q. Did you ever instruct someone not to  
19 broadcast the programs?

20 A. I wasn't there. I haven't been in the  
21 office in a year.

22 Q. Mr. Bates, the answer is yes or no. Did  
23 you or DBPoland -- DBPol ever instruct or take any  
24 steps to stop Intercom Poland from broadcasting

1 tendered to the witness.)

2 BY MR. ZAVIN:

3 Q. Mr. Bates, I've marked as Exhibit 42 a  
4 declaration that you submitted in this lawsuit.

5 Do you recognize this document?

6 A. I do.

7 Q. And it appears to -- it's not  
8 Bates-stamped, but it's a six-page declaration dated  
9 August 31, 2012; is that correct?

10 A. Yep.

11 Q. Did you, in fact, sign this on page 6 of  
12 the declaration?

13 A. I did.

14 Q. Did you review this declaration --

15 A. I did.

16 Q. -- before you signed it?

17 A. Yep.

18 Q. On -- in paragraph 17 of this  
19 declaration, you say that you did not participate or  
20 contribute in any way to any decision by Intercom  
21 Poland to continue broadcasting programs to  
22 subscribers after May 18, 2012; is that correct?

23 MR. PARKS: I object to the form of that  
24 question because it's not a correct reading of the

1 document.

2 MR. ZAVIN: Well, he can read through the  
3 document. I didn't read all of it, but I'm happy to  
4 read the entire paragraph into the record, which I  
5 will.

6 MR. PARKS: Okay.

7 BY MR. ZAVIN:

8 Q. You stated in paragraph 17: "I did not  
9 participate in or contribute in any way to any  
10 decision that may have been made by Intercom  
11 Ventures or Intercom Poland to continue broadcasting  
12 any programing to subscribers in any location after  
13 midnight on May 18, 2012."

14 Do you see that?

15 A. Correct.

16 Q. Okay. First question: Am I correct that  
17 there are subscribe -- Intercom Poland has  
18 subscribers in New York?

19 A. I -- I couldn't give you the -- where the  
20 subscribers are.

21 Q. Well, there are -- there were  
22 approximately how many subscribers? 2,000? 3,000?

23 A. I don't know the latest count.

24 Q. Well, is that approximately correct, as

1 of the spring of 2012?

2 A. Probably directionally. Anywhere within  
3 those goal posts. I don't know.

4 Q. Okay. Do you have any reason to think  
5 that none of them were in New York -- the  
6 state of New York?

7 A. Do I have any reason to think that none  
8 of them were?

9 Q. None of them were in the  
10 state of New York.

11 A. I imagine there are a few in New York.

12 Q. Okay. And you're saying you did not make  
13 the decision to continue broadcasting. Who did?

14 A. I don't know.

15 MR. PARKS: I object to the form of the  
16 question; because, again, that -- that  
17 mischaracterizes the prior testimony, and it  
18 mischaracterizes the statement in the declaration.

19 MR. STECK: I object to the lack of foundation.

20 BY MR. ZAVIN:

21 Q. Okay. Mr. Bates, if you're not  
22 responsible for what Intercom Poland does, who is  
23 responsible?

24 MR. STECK: I object to the question. There's

1 absolutely no foundation of any kind for it.

2 MR. PARKS: Yes. I object on the same basis.

3 There's absolutely no context.

4 BY MR. ZAVIN:

5 Q. You can answer.

6 A. I don't know.

7 Q. You're saying that you're the sole  
8 investor --

9 A. Yeah.

10 Q. -- in terms of money.

11 DBPol is the managing member.

12 A. Yeah.

13 Q. And you have no idea who makes the  
14 decisions for Intercom Poland?

15 MR. PARKS: Object to the form of the question.

16 Mischaracterizes a lot of prior testimony.

17 You can answer.

18 MR. STECK: And I object for lack of  
19 foundation.

20 BY THE WITNESS:

21 A. I imagine it's the people that report to  
22 the office every day and show up and are in active  
23 dialogue with Bob Spanski throughout the whole --  
24 the last year and a half.

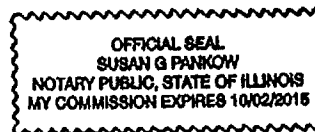
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SPANSKI ENTERPRISES, INC. )  
and EUROVU, S.A., )  
Plaintiffs, ) Case No.  
vs. ) 12 CV 4175 (WHP)  
INTERCOM VENTURES, LLC, ) ECF CASE  
INTERCOM POLAND, LLC, TONY )  
HOTI AND DYLAN BATES, )  
Defendants. )

I hereby certify that I have read the  
foregoing transcript of my deposition given at the  
time and place aforesaid, consisting of Pages 1 to  
184, inclusive, and I do again subscribe and make  
oath that the same is a true, correct and complete  
transcript of my deposition so given as aforesaid,  
and includes changes, if any, so made by me.

DYLAN PAUL BATES

SUBSCRIBED AND SWORN TO  
before me this 18<sup>th</sup> day  
of September, A.D. 2012.



Notary Public

*Susan G. Pankow*



DEPOSITION ERRATA SHEET

Assignment No. 8148

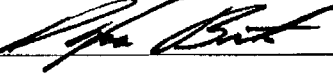
Case Caption: SPANSKI ENTERPRISES, INC., et al., v.  
INTERCOM VENTURES, LLC, et al.

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have  
read the entire transcript of my Deposition taken in  
the captioned matter or the same has been read to  
me, and the same is true and accurate, save and  
except for changes and/or corrections, if any, as  
indicated by me on the DEPOSITION ERRATA SHEET  
hereof, with the understanding that I offer these  
changes as if still under oath.

Signed on the 18<sup>th</sup> day of

September, 2012.



DYLAN PAUL BATES